

Hunt, Kathleen A.
6002 Barrett Avenue
El Cerrito, CA 94530

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Beagle <div style="text-align: right;">Plaintiff/Petitioner(s)</div> <div style="text-align: center;">VS.</div> Cochran <div style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</div>	No. <u>RG15794528</u> Order Motion for Judgment on the Pleadings Granted
---	---

The Motion for Judgment on the Pleadings filed for Avicenna Development Corporation and Conlan Press, Inc. and Connor Freff Cochran was set for hearing on 10/24/2017 at 09:00 AM in Department 16 before the Honorable Michael M. Markman. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Defendants' Motion for Judgment on the Pleadings to the Complaint of Plaintiff Peter Beagle ("Beagle") is **GRANTED IN PART** and **DENIED IN PART**. The Court grants judgment on the pleadings for Defendants on Plaintiff's claim for physical elder abuse but denies the motion in all other respects.

Plaintiff Beagle alleges fifteen causes of action, of which thirteen are alleged against Defendant Connon Freff Cochran, eight are alleged against Defendant Conlan Press, Inc., and five are alleged against Defendant Avicenna Development Corporation ("Defendants"). Rather than pick and choose, Defendants attack all fifteen of them.

The court finds that the complaint includes factual allegations sufficient to support all but one of the fifteen causes of action alleged by Beagle. Indeed, the vast majority of Defendants' motion may accurately be characterized as frivolous. "Subjective bad faith may be inferred by evidence that appellants intended to cause unnecessary delay, filed the action to harass respondents, or harbored an improper motive. The timing of the action may raise an inference of bad faith." (FLIR Systems, Inc. v. Parrish (2009) 174 Cal. App. 4th 1270, 1278.) Defendants' papers also appear to include inaccurate citations to the California Welfare & Institution Code as well as to the California Corporations Code.

Financial Elder Abuse (Claims 1-3) and Fraud (Claim 5): Defendants attempt to attack Plaintiff's elder abuse claims by asserting that the "principal allegation" concerning elder abuse is the transfer of Beagle's intellectual property to Avicenna, which Defendants claim would be time-barred under Welfare & Institutions Code section 15657.7. (See Motion at 3:2-3.) But, Beagle's complaint includes numerous other financial elder abuse and fraud allegations. He alleges the failure to pay Beagle; a failure to maintain complete business records; an unauthorized transfer of Beagle's IP to a sham corporation; refusing to provide adequate documentation of the business deals and financial arrangements that Defendant Cochran made as Beagle's agent despite repeated requests; mismanagement of Avicenna; making false corporate filings; and/or failing to make necessary business filings. (See Complaint ¶¶ 22(c), 22(f), 22(e), 22(g), 22(h), 24(b), 24(c), 26(f).) Additionally, Plaintiff alleges that financial elder abuse is on-going, which would undermine a potential statute of limitations defense. (Complaint

¶111(g)). Plaintiff's claim is not time-barred based on the date his intellectual property was transferred to Defendants.

Defendants assert that the financial elder abuse claim should fail because "the complaint does not allege what money was owed, why it was owed, when it was owed, or how much was unpaid." (Motion at 3:11-12.) But, the Complaint does state that the money owed was that "which Beagle earned through his writing and other business activities." (Complaint ¶¶ 22(c), 24(b), 26(a).) The fact that Beagle does not know how much money was unpaid is apparently due to Defendants' refusal to provide him an accounting, as alleged. (See Complaint ¶¶ 22(g), 24(c), 26(b-c); Motion to Compel Production of Documents filed 08/07/2017; Court Order 04/04/2017.)

Plaintiff's financial elder abuse claim based on a "constructive fraud" theory, while somewhat novel, appears to raise facts that are distinct from those in the first cause of action. Plaintiff's financial elder abuse claim based on an emotional distress theory points to a distinct set of injuries. While Plaintiff could have pleaded the first three causes of action as a single claim, the fact that Plaintiff drafted the complaint by parsing out the separate theories of injury is of no moment and does not justify entry of judgment on them separately or in the aggregate.

Physical Elder Abuse (Claim 4): Defendants contend that physical elder abuse requires a physical battery or sexual assault to have occurred. (Motion at 4:7-10 (citing Wel. & Inst. Code §15610.63).) Beagle contends he has alleged facts that constitute unreasonable physical constraint under section 15610.63(d), by alleging that Defendants Cochran and Conlan used threats of financial harm, as well as harm to Beagle's professional reputation, in order to induce Beagle to sign 5,000 postcards within a period of just a few days" and that Beagle suffered physical harm as a result. (Complaint at ¶55.) But, under section 15610.63(d), "unreasonable physical constraint is required. Defendants are correct that the complaint does not allege physical constraint - rather, it alleges a physical manifestation of financial elder abuse. The Court must grant judgment on the pleadings as to physical elder abuse.

Defamation (Claims 6-7): Defendants contend that Cochran's communications cannot be the basis for a defamation claim because they were privileged, since Cochran was Beagle's business associate. (Motion at 9-10.) But, the Complaint alleges that communications were made to a wide variety of people, including Beagle's family, friends, personal physician, fans, and business associates, as well as casual readers of social media sites where these statements were posted publicly by Cochran. (Complaint ¶¶74, 78.) Defendants fail to assert what common interest Defendants believe to be shared by all members of this disparate group, which is required for the application of this limited privilege. See Cal. Civ. Proc. §47(c). Defendants also imply that only Avicenna suffered damages from the alleged defamation. (Motion at 6:7-9.) Plaintiff, however, has alleged that he suffered both economic and personal damages. (Complaint ¶¶ 82(a), 83, 92 (b), 92(c).)

Breach of Fiduciary Duty (Claim 8): Defendants attack the merits of Plaintiff's breach of fiduciary duty claim, which is not appropriate in a motion for judgment on the pleadings. Plaintiff has sufficiently alleged injury to himself as a result of Plaintiff's conduct to survive this motion.

Breach of Contract (Claim 9) and Breach of Covenant of Good Faith & Fair Dealing (Claim 14): Here again, Defendants debate the merits of Plaintiff's claim and not the sufficiency of Plaintiff's allegations. Defendants' request reads like a summary judgment motion and not a motion for judgment on the pleadings.

Accounting (Claim 10): Yet again, Defendants debate the merits of Plaintiff's claim by arguing "there is no allegation that any of the Defendants owe Plaintiff money." (Motion at 8.) The gravamen of the entire complaint is that Defendants owe Plaintiff what he believes is a rather substantial amount of money.

Constructive Trust (Claim 11) and Conversion (Claim 12): Defendants contend Plaintiff failed to identify a res taken from him that could be placed in a constructive trust or ownership of property that could be converted. To the contrary, the complaint alleges misappropriation of substantial intellectual property assets, in addition to funds generated by royalties and promotion efforts.

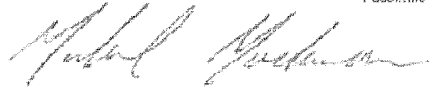
Involuntary Dissolution (Claim 13): Defendants assert that California Corporation Code §§1900 et seq provides specific procedures that must be followed when a shareholder seeks to dissolve a corporation. (Motion at 9:18-20.) The chapter which addresses involuntary dissolution is Cal. Corp. Code §§1800-

1809. Defendants contention do not appear to undermine Plaintiff's claims.

Bus. & Prof. Code § 17200 (Claim 15): Plaintiff has more than adequately pleaded a violation of section 17200 based on allegations of unfair practices involving the handling of Plaintiff's intellectual property and funds relating to his promotion of his works.

Dated: 10/24/2017

Facsimile

A facsimile signature of Judge Michael M. Markman, consisting of two distinct, stylized handwritten signatures in black ink.

Judge Michael M. Markman

SHORT TITLE: Beagle VS Cochran	CASE NUMBER: RG15794528
---------------------------------------	--------------------------------

ADDITIONAL ADDRESSEES

Law Office of John H. Carmichael
Attn: Carmichael, John H.
13700 Cimarron Avenue
Gardena, CA 90249

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG15794528
Order After Hearing Re: of 10/24/2017

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/25/2017.

Chad Finke Executive Officer / Clerk of the Superior Court

By

Digital

Deputy Clerk